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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains a pursuit of County position on a proposed trailer bill relating to clean-up provisions for the dissolution of redevelopment agencies and disposition of assets pursuant to ABX1 26 of 2011.

Pursuit of County Position on a State Budget Item

The FY 2012-13 May Budget Revision includes \$1.8 billion to address the State Budget deficit from a proposal to clarify the dissolution of Redevelopment Agencies (RDAs) and to transfer unencumbered cash assets of former RDAs to K-14 schools and other affected taxing entities. ABX1 26 (Chapter 5, Statutes of 2011) requires successor agencies to make payments for enforceable obligations and to principally wind down the affairs of the dissolved RDAs. Former RDA assets, not otherwise encumbered or reserved, are to be distributed to the affected local taxing entities in the same manner as property tax revenues, after debt obligations and passthrough agreements are paid.

Overview

Last week, the Administration released trailer bill language to establish a framework to ensure that RDA cash assets, including Low and Moderate Income Housing (LMIH) funds, that are not required for the retirement of RDA debts and for limited administration costs are made available for use by local agencies to fund core government services as required under ABX1 26 of 2011. Successor agencies would be required to:

- Conduct a specified audit review to document and determine the amount of cash assets and LMIH funds available for distribution to local taxing entities; and
- Expedite the transfer of RDA assets from successor agencies to county auditor-controllers by specified dates in FY 2012-13.

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In addition, the proposed trailer bill contains clean-up language to modify various provisions of ABX1 26 of 2011 to:

- Authorize county auditor-controllers to object to items or sources of funding on the Recognized Obligation Payment Schedule (ROPS);
- Clarify the Department of Finance's (DOF) authority to review oversight board actions;
- Provide authority to the DOF, State Controller's Office (SCO), and county auditor-controllers to retrieve improperly-made payments;
- Prohibit successor agencies' authority to create new enforceable obligations;
- Provide clarification on bond refinancing;
- Provide clarification on the administrative cost allowance;
- Allow oversight boards to contract with the county or other public or private agencies for administrative support of oversight meetings; and
- Clarify the legal status of successor agencies.

The proposed bill language does not address passthrough calculations. The following is an overview of the major provisions in the proposed trailer bill.

Determination of Cash Assets Available

Required Close-Out Audit Review. The proposed trailer bill language would require each successor agency to employ a licensed accountant to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities as required. The close-out review, at minimum, would include:

- The value of assets transferred from the former RDA to the successor agency on or about February 1, 2012;
- The value of assets, cash and cash equivalents transferred after January 1, 2011 through June 30, 2012 by the RDA or the successor agency to the host city or county and the purpose of each transfer;
- The value of any cash or cash equivalents transferred after January 1, 2011 through June 30, 2012 by the RDA or the successor agency to any other public agency or private party and the purpose of each transfer;

- The expenditure and revenue accounting information for FY 2011-12 that accounts for changes in balances from those reported to SCO for FY 2010-11;
- A separate accounting for the balance for the LMIH fund and all other funds and accounts, as specified; and
- A total of the net balances available after deducting the total amounts described in the separate accounting for the balance for the LMIH fund and for all other funds and accounts, as specified.

The proposed language also would require a separate accounting for the balance of LMIH fund and other funds and accounts that would be based on:

- A statement of the total value of the account as of June 30, 2011;
- An itemized statement listing any amounts that are legally restricted and cannot be provided to taxing agencies, which could include the proceeds of any bonds, grant funds or funds provided by other governmental entities that place conditions on their use;
- An itemized statement of the values of any assets that are not cash or cash equivalents, which could include physical assets, land, records and equipment;
- An itemized listing of each enforceable obligation that requires the retention of any current balances, the amount of such obligation and an explanation of why future revenues are not able to satisfy that obligation; and
- An itemized list and analysis of any amounts of current balances that are needed to satisfy obligations that will be placed on the ROPS for the current fiscal year.

If a close-out review finds that insufficient future revenues are available to fund upcoming obligations and thus retention of current balances is required, the review must detail the projected property tax revenues and other general purpose revenues to be received by the successor agency.

Additionally, the close-out review would add any amounts that were transferred where no enforceable obligation to make such transfer existed. The resulting sum would be available for allocation to affected taxing entities, as specified. The proposed language provides specific definitions for the close-out reviews.

Deadline for Transfer of Available Cash Assets. The trailer bill language proposes a number of legislative changes to expedite the distribution of RDA assets to the affected taxing entities. Those changes include a set of deadlines for the review and determination

of assets available in the LMIH fund and other funds and accounts, and deadlines for transfer and distribution of available assets by successor agencies. The proposed language also includes authorizations to offset or reduce funds distributed to city, county, or successor agencies in the event that the successor agency does not remit funds to the county auditor-controller on time. The DOF shall specify the form that successor agencies must use to submit the information to the departments.

Actions Required as Part of the Due Diligence Review	Account Balances for LMIH Fund	All Other Fund & Account Balances
Successor Agency Submit to DOF, SCO, and Auditor by	10/1/2012	12/15/2013*
Transmit Oversight Board Review and Approval to DOF and Auditor by	10/15/2012	1/15/2013
DOF Completes its Review and Determinations by	11/10/2012	4/4/2013
Successor Agencies Transmit Funds by	w/in 5 working days	w/in 5 working days
Auditor Reports on Amounts Submitted by Successor Agencies to DOF by	12/1/2012	4/20/2013
Auditor Reports to DOF which Successor Agencies failed to remit funds by	12/1/2012	4/20/2013

**The due date for successor agencies to submit info on fund balances for non-LMIH funds currently reads as 12/15/13; however, we believe that is a typo and should read 12/15/12.*

The findings of the determination of cash assets available shall be reviewed and approved by the oversight board at a public meeting. The oversight board may adjust the amounts in each fund if further information and analysis indicate the need for adjustment and the oversight board may also authorize the successor agency to retain assets or funds identified in the review. If the oversight board authorizes any retention of funds, it must identify the funds retained as well as their source and purpose, and this action is subject to review approval by DOF. If DOF decides to overturn any of the oversight board's authorization to retain funds, it must notify the oversight board and the successor agency of its decision(s).

If a successor agency does not submit the required sums by the above deadlines, DOF may take one of two actions:

- Order an offset of an equal amount of sales or use tax to the distribution provided to the city or county. These offsets will be provided by the Board of Equalization to the county auditor-controller each month until the full offset amount is reached. The

county auditor-controller will disburse the offset funds to the affecting taxing entities;
or

- Direct the county auditor-controller to deduct the unpaid amount from future property tax allocations to the successor agency until the full amount of required payment is met.

The proposed trailer bill also adds language that directs successor agencies to make diligent efforts to recover any money that was transferred between January 1, 2011 and June 30, 2012 to other entities (city or county and any other public agency or private party) without an enforceable agreement. If funds improperly transferred to a public entity are not returned within 60 days, they may be recovered by an offset of sales and use tax or property tax allocations to the local agency (as coordinated by DOF, the SCO, and the county auditor-controller).

County Auditor-Controller's Authority to Object to Items on ROPS

The county auditor-controller would be authorized to review the successor agency ROPS and object to:

- Inclusion of any items not demonstrated to be an enforceable obligations; and
- Proposed source of funding for any items on the ROPS.

The county auditor-controller must notify the successor agency and DOF of any such objections at least 15 days prior to allocations to the Redevelopment Property Tax Fund (RPTF). Allocations will be made on January 2 and June 1 of each year.

If the oversight board objects to the auditor-controller's findings, it may request that DOF make a determination of what will be approved for inclusion on the ROPS.

Department of Finance Authority to Review Oversight Board Actions

The proposed language would clarify the timeframe for DOF's review of all actions taken by an oversight board. Oversight boards would be required to provide notice and sufficient information regarding all actions taken to the DOF via electronic means and no action of the oversight board shall be effective until five business days after that notice. In the event that DOF requests a review of any oversight board's actions, the amount of time that it has to approve the action, request more information, or return it to the oversight board for reconsideration would be increased from 10 to 20 days.

Prior to the date for each allocation of funds by the county auditor-controller, DOF also would have the ability to eliminate or modify any item on a ROPS prior to approving it. DOF shall provide the successor agency and the county auditor-controller notice and reasons for

its actions, and the auditor-controller shall reflect DOF's actions in its determination of the amount of property tax to be allocated to the successor agency. If an oversight board disputes the DOF determination on an item, the eventual resolution of that issue may be reflected on future ROPS. DOF may also agree to an amendment to the ROPS to reflect a resolution; however, this will not affect a past allocation of property tax or create a liability for any affected taxing entity.

State and Local Authority to Require Return of Improper Payments

The proposed trailer bill language would authorize the DOF, SCO, and county auditor-controller to claw back payments that were made improperly by RDAs or successor agencies in conflict with the provisions of ABX1 26 of 2011. The proposed language also would include the ability to off-set any amounts owed through deduction of a city's sales tax or property tax payments if not repaid within 60 days.

Funds incorrectly spent or transferred to a public entity would be required to be returned within 60 days. If funds are not returned within that time, the Board of Equalization would make an offset of sales and use tax or the county auditor-controller may reduce the property tax allocations to the local agency. The DOF, SCO, and county auditor-controller would also have the authority to demand the return of funds erroneously spent or transferred to a private person or other private entity within 60 days. If these funds are not repaid after this time, they may be recovered through any lawful means of collection and are subject to a 10 percent penalty plus interest at the rate charged for late personal income tax payments from the date the improper payment was made to the date the money is repaid.

Successor Agencies Prohibited Authority to Create New Enforceable Obligations

The trailer bill language would clarify that any actions taken by RDAs to create obligations after June 27, 2011 would be voidable and would not create enforceable obligations. Additionally, successor agencies would: 1) have no authority to create new enforceable obligations under the Community Redevelopment Law or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011; 2) have restricted authority to create enforceable obligations to conduct the work of winding down the RDA including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance; and 3) have no authority to transfer any powers, or revenues of the successor agency to a public or private party, except pursuant to an enforceable obligation on a ROPS approved by DOF. Any such transfers of authority or revenues that are not made in connection to an enforceable obligation on a ROPS approved by DOF would be declared void and the successor agency would be required to take action to reverse any such transfers. SCO may audit any transfer of authority or revenues prohibited and may order the prompt return of any money or other things of value from the receiving party.

Bond Refinancing

The proposed trailer bill states that successor agencies would have the authority, rights and powers to issue bonds or incur other indebtedness to:

- Refund the bonds or indebtedness of its former redevelopment agency or of the successor agency to provide savings;
- Finance debt service spikes, including balloon maturities;
- Make payments under enforceable obligations when such obligations include the irrevocable pledge of property tax increment or other funds and the obligation to issue bonds secured by such pledge; and
- Amend existing enforceable obligations under which the successor agency is obligated to reimburse a political subdivision of the State for the payment of debt service on a bond or other obligation, or to pay all or a portion of the debt service on the bond or other obligation of such political subdivision to provide savings to the successor agency.

Prior to incurring any bonds or other indebtedness, the successor agency may subordinate to the bonds or other indebtedness the amount required to be paid to an affected taxing entity, provided the taxing entity has approved. The successor agency must provide evidence that funds will be available to pay both the debt service on the bonds as well as the payments required to the taxing entity when due. The affected taxing entity has 45 days to approve or disapprove the successor agency's request, and may only disapprove if it finds that the successor agency will not be able to make both payments.

All of the above actions shall be subject to the approval of the successor agency's oversight board. Also, the oversight board may direct the successor agency to undertake any of these activities provided the successor agency will be able to recover its related costs associated with the transactions. The oversight board may not unilaterally approve any amendments to or early termination of the bonds, indebtedness, or enforceable obligation.

If the Department of Finance does not approve or request review within five business days, scheduled payments on the bonds or other indebtedness shall be listed on the ROPS and will not be subject to further review and approval by DOF or the SCO. The DOF may extend its review time to 60 days and may seek the assistance of the State Treasurer in evaluating proposed actions.

Any bonds, indebtedness, or amended enforceable obligations shall be included in the successor agency's ROPS and shall be secured by a pledge of and lien on and shall be repaid from moneys deposited from time to time in the Redevelopment Property Tax Trust Fund.

Administrative Cost Allowance

The redevelopment trailer bill language would clarify that the administrative cost allowance: 1) is an amount that is payable from property tax revenues of up to 5 percent of the property tax allocated to the successor agency on the ROPS for the period covering January 1, 2012 through June 30, 2012; 2) does not apply to any administrative costs that can be paid from bond proceeds or from sources other than property tax; 3) does not include any litigation expenses related to assets or obligations, settlements and judgments, and costs of maintaining assets prior to disposition; and 4) does not apply to employee costs associated with work on specific project implementation activities.

Contract Authority to Conduct Oversight Board Meetings

The trailer bill language would authorize an oversight board to contract with the county or other public or private agencies for administrative support to conduct meetings. As previously reported, this office and the Sacramento advocates were pursuing an amendment to ABX1 26 of 2011 to allow the County to administer and conduct oversight board meetings of successor agencies for former RDAs. The Executive Office indicates that they are providing administrative support services to 14 oversight boards in the County.

Designation of Successor Agencies as Separate Legal Entity

The trailer bill language would provide that a successor agency is a separate public entity from the public agency that provides for its governance and would prohibit merger with the sponsoring city. The liabilities of the RDA would not transfer to the city and the assets do not become city assets. A successor agency would have its own name, can be sued, and can sue. All litigation involving a RDA would automatically transfer to the successor agency. The separate RDA employees would not automatically become city employees and the successor agency would retain its own collective bargaining status. In addition, designated successor agency members would have personal immunity from suit for their actions taken within the scope of their responsibilities as designated successor agency members.

Potential County Impact

Overall, the proposed language would improve the RDA dissolution process and would address major issues which were not addressed under ABX1 26 of 2011. The redevelopment trailer bill language effectuates the asset disposition of former RDAs including LMIH fund balances and establishes a set of rules and timelines for the transfer of unencumbered cash assets to taxing entities. The proposed language also contains key provisions that prohibit the creation of new obligations or debts and ensures that enforceable obligations are safeguarded during RDA dissolution and the retirement of RDA debt. The proposed changes were not fully defined in ABX1 26 of 2011 and would function to preserve the revenues and assets of RDAs to make certain that enforceable obligations

are paid and allow affected taxing entities to receive remaining revenues to fund core government services.

The Auditor-Controller indicates that the proposed trailer bill language would provide for standard audit procedures and report requirements, allowing for the documentation of former RDA cash assets including the balance of LMIH funds. According to the Auditor-Controller, the rules and guidelines provided in the proposed language would assist auditors in the review and allocation responsibilities under ABX1 26 of 2011.

However, the Auditor-Controller expresses concerns regarding adequate timelines associated with the review and processing of payments, and recommends that the proposed language be amended to specify the due dates for oversight boards' approval of ROPS (each November 15 and each April 1) to ensure that the DOF has sufficient time to review and return the ROPS if it is determined that the oversight board needs to amend and approve a new ROPS. The Auditor-Controller indicates that the DOF's elimination or modification of any items on a ROPS prior to approving it for purposes of determining the amounts of property tax allocations to successor agencies and affected taxing agencies should be completed at least 15 business days prior to the dates for each allocation of funds by county auditor-controllers to ensure sufficient time is available to determine if any passthrough payments need to be subordinated or deferred.

The proposed language also would restrict successor agencies authority to create enforceable obligations to conduct the work of winding down the RDA including hiring staff. It is unclear if this could allow successor agencies to exceed their administrative cap by shifting these costs to the ROPS. Therefore, this office recommends language to clarify that any staff or administrative services added as an enforceable obligation should be for the sole purpose of providing support to the oversight board, and only to the extent that an oversight board requires staff or administrative services.

Additionally, the proposed language provides for clarification on the designation of oversight board members appointed by the largest special district and the member representing the employees of the former RDA. County Counsel indicates that it has recently become aware of the improper appointment of an alternate or designee member to serve on an oversight board in the County. Therefore, this office recommends that the proposed language be amended to provide a clarification that alternate members are not authorized under AB1X 26.

Recommendation

The Administration's proposed trailer bill language allows for an improved dissolution process by establishing a specific framework to transfer unencumbered cash assets of former RDAs from the successor agency to county auditor-controllers for distribution to local taxing entities, including the County and its special districts.

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This office, Auditor-Controller, and County Counsel continue to analyze the proposed language to determine potential impact on the County. However, based on our initial analysis this office recommends a support position and request that the proposed language be amended to address timing issues associated with the responsibilities of the auditor-controllers and to provide technical changes and clarifications related to asset transfer deadlines, among other changes.

Therefore, consistent with your Board directive of January 17, 2012 to take all actions which are necessary to successfully implement the requirements and goals of ABX1 26 of 2011 and existing Board policy to oppose any redevelopment legislation which would cause the County to lose revenues, **unless otherwise instructed by the Board, the Sacramento advocates will support the redevelopment trailer bill language and request clean-up/technical amendments as noted above.**

We will continue to keep you advised.

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